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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,383	03/12/2004	James C. Glasgow	1359-002	7285
4678	7590	02/24/2006	EXAMINER	
MACCORD MASON PLLC 300 N. GREENE STREET, SUITE 1600 P. O. BOX 2974 GREENSBORO, NC 27402			ASTORINO, MICHAEL C	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/799,383	GLASGOW, JAMES C.
	Examiner	Art Unit
	Michael C. Astorino	3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 19 September 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-31 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

The examiner acknowledges the amendment filed September 19, 2005.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant use the term "optimal" in claims 1 and 31 twice. The term "optimal" in claim 1 is a relative term which renders the claim indefinite. The term "optimal" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Claims 2-30 are rejected as being dependent on a rejected claim under 35 U.S.C. 112, second paragraph.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-22, and 24-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over [www.vesteon-software.com/PersonalTrainerPDA2.htm](http://www.vesteon-software.com/PersonalTrainerPDA2.htm) (hereinafter Vesteon-software) in view of [www.bodysci.com/bodysci\\_main.htm](http://www.bodysci.com/bodysci_main.htm). (hereinafter Bodysci.com)**

Note to applicant: the word “for” in the claim may be properly interpreted as “capable of,” and “capable of” does not require that reference actually teach the intended use of the element, but merely that the reference does not make it so it is incapable of performing the intended use.

Claim 1. A hand-held device for use in personal training and fitness evaluation comprising:  
a portable device compact, hand-held device including a memory, a microprocessor, a power source, input/output interface for a user to input data and view outputs including results from processing the input data according to predetermined formulas relating to personal training and fitness *for* at least one individual, wherein the device is not required to be directly connected to diagnostic equipment; (Vesteon-software discloses the use of a PDA with it's personal trainer software)

software *capable of* running on the device *for* automatically calculating predetermined, select formulas associated with factors relevant to at least one individual's physical fitness (on page 2 of the website the software program states it recorded exercise bests, to perform this function requires the use of a formula/algorithm associated with factors relevant to at least one individual's physical fitness);

wherein the input data includes an initial assessment and evaluation input (*discloses recording original and current body weight*) that is required to compile a customized

cardiovascular and resistance based workout program (*creates a customized exercise workout, bullet points refer to Cardio and Weight.*). Because of the use of the term “optimal” within the remaining limitation it is unclear to the examiner as to whether or not the Vesteon-software program is within the metes and bounds of the claimed invention. The examiner’s best guess at this point is that the Vesteon-software lacks the remaining limitations of the claimed invention even though the reference does state in part, *“It was developed to allow you to build personalized fitness plans with ease. It also allows you to stay focused, giving purpose to each workout. Because achieving fitness objectives is measured in weeks and months (not in days), it’s easy to lose sight of the fitness goal not to mention becoming bored and quitting without some direction.”* See also, *bullet points on pages 1 and 2 of the referenced website.* However, Bodysci.com a reference in an analogous art provides a virtual trainer software designed to automatically generate suggested workout plans based on you input, preference and workout history. This rejects the broadest reasonable interpretation of the remaining limitation; the input data further includes workout data inputs and wherein the software of the present invention adjusts a fitness program during each use to ensure that the fitness program is optimal, based on the initial inputs and user goals combined with the workout data inputs, thereby providing dynamic tracking and updating of the user’s optimal fitness program. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the fitness program of Vesteon-software in view of software component that suggests an optimal fitness program based on user input Bodysci.com, since Bodysci.com states automates the customization of ones exercise plan..

In regards to claims 2 and 3, a PALM OS PDA is capable of automatically generating the outputs and providing in a printable format for providing a hard copy. (Vesteon-software, page 1, PALM OS PDA)

In regards to claims 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 24, 27, 28, and 31 are rejected on the same basis as claim 1.

In regards to claims 10, 11, 25, and 30, Vesteon-software, page 2 states, databases are backed up on PC. A database must exist on the PDA for it to be backed up on a PC.

In regards to claim 18, see also page 2 of Bodysci.com.

In regards to claim 19, Vesteon-software, page 2, software program records “bests” to PDA.

In regards to claim 20, see page 1 of Bodysci.com and/or pages 1-2 of Vesteon-software.

In regards to claim 21, see page 2 of Bodysci.com.

In regards to claims 22, 26, and 29, Vesteon-software states it discloses displaying differences in body weight over days.

**Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over [www.vesteon-software.com/PersonalTrainerPDA2.htm](http://www.vesteon-software.com/PersonalTrainerPDA2.htm) (hereinafter Vesteon-software) and [www.bodysci.com/bodysci\\_main.htm](http://www.bodysci.com/bodysci_main.htm). (hereinafter Bodysci.com) in view of Browne US Patent Number 5,598,849 (previously cited).**

The fitness software provided by Vesteon-software and Bodysci.com do not disclose the use of taking the heart rate or blood pressure of an exerciser but at least Vesteon-software discloses the PDA is a Personal Trainer PDA and Bodysci.com teaches the PDA is a Vitrual

Trainer for Health and Fitness. However, Browne a reference in an analogous art teaches of taking the heart rate or blood pressure of an exerciser column 5, lines 9-28). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method used in the operation of the software program of Vesteon-software and Bodysci.com in view of the determination of heart rate and/or blood pressure of Browne, since Browne states that a user intending to enter into an exercise program will usually to taken to assess health/establish a physiological profile.

***Response to Arguments***

Applicant's arguments filed September 19, 2005 have been fully considered but they are not persuasive.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

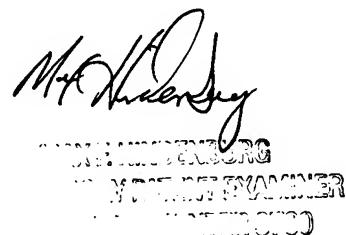
however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Astorino whose telephone number is 571-272-4723. The examiner can normally be reached on Monday-Friday, 8:30AM to 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Astorino  
February 20, 2006



Michael C. Astorino  
EXAMINER  
ART UNIT 3736  
USPTO